

The defendants, in Title Suit No.119/2006, sought to invoke the jurisdiction of this Court under Article 227 of the Constitution of India in challenging the order dated 22.06.2007 passed by the learned Civil Judge (Sr. Division), No.3, Kamrup at Guwahati, whereby and whereunder the application filed by the present defendants under Order 7 Rule 11(d) read with Section 151 of the CPC for rejection of the plaint has been rejected.

The present respondents as plaintiffs, instituted Title Suit No. 119/2006 in the Court of the learned Civil Judge (Sr. Division) No.3, Kamrup at Guwahati against the present petitioners as defendants, apart from other persons, for declaring the right, title and interest of the plaintiffs along with the proforma defendant No.16 over the suit land described in the Schedule, for recovery of khas possession, for declaration that the striking out the names of the mother of the plaintiffs' from the suit in respect of the suit property from the revenue records is illegal, for declaration that the plaintiffs and the proforma defendant No.16 are entitled to get their names mutated from the revenue records, to issue precept and also for passing a decree declaring the sale deed dated 05.07.1957 executed by Shiv Narayan in favour of the defendant No.1 is fraudulent and the said sale deed did not convey any right, title and interest on the defendant No.1 and also for permanent injunction. In the said suit the present petitioners, who are the defendants, filed an application under Order 7 Rule 11(d) read with Section 151 CPC claiming rejection of the plaint on the ground that the suit filed by the plaintiff is barred by limitation as the sale deed sought to be declared as fraudulent, was executed in the year 1957 and the suit has been instituted in the year 2006 and also contending that the suit is not maintainable in view of Section 154 of the Assam Land and Revenue Regulation, 1886.

I have heard Mr. S. Shyam, learned counsel for the petitioners.

Mr. Shyam has contended that it is evident from the statements made in the plaint as well as the documents appended thereto that the suit of the plaintiffs is barred by time as the plaintiffs in the said suit prayed for a decree declaring the sale deed dated 05.07.1957 as fraudulent, the suit having been instituted in the year 2006. It has further been submitted that there being a bar created by Section 154 of the Assam Land and Revenue Regulation, 1886 to the effect that no Civil Court shall exercise its jurisdiction in the formation of records of rights of the preparation signing or alteration contained therein, the suit is not maintainable.

The learned Court below by the order impugned in the present petition has held that whether the suit of the plaintiffs is barred by time is a question of fact as the limitation for filing the suit starts from the date when the plaintiffs have knowledge about the sale deed executed in the year 1957 and such question of fact cannot be gone into at the initial stage while dealing with the application under Order 7 Rule 11(d) read with Section 151 CPC and requires to be gone into after recording the evidence and while disposing of the suit. The learned Trial Court has rejected the plea of non maintainability of the suit in view of Section 154 of the Assam Land and Revenue Regulation, 1886 on the ground that the suit is also being for declaration of right, title and interest the bar under Section 154 of the Regulation is not applicable.

From a bare reading of the plaint filed in the aforesaid suit, it appears that the plaintiffs claimed knowledge of the sale deed executed in the year 1957 on a date in the year 2006. Whether the plaintiff had actually the knowledge on that date or the knowledge of the plaintiffs' mother can be taken as a knowledge of the plaintiffs, are the questions of fact, which are required to be gone into by the learned Trial Court while finally disposing of the suit after recording evidences.

Further the suit being also a suit for declaration of right, title and interest, I am of the view that the bar created by Section 154 of the Assam Land and Revenue Regulation, 1886 is not applicable in the suit of this nature.

e. However, those questions are required to be gone into by the learned Court below while disposing of the suit.

In view of the aforesaid discussion, I do not find any reason to interfere with the order passed by the learned Court below, in exercise of the jurisdiction under Article 227 of the Constitution of India.

The revision petition is dismissed.